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TO: All Chief Circuit Judges
cc: Family Division Judges
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FROM: John D. Ferry, Jr.

SUBJ: SCAO Administrative Memorandum 2004-11
Abatement Deviation Policy

Recently, the state of Michigan converted to a new statewide child support enforcement computer system (MiCSES). The conversion required programmers to implement several Michigan statutes and court rules. That required programming has had some unintended consequences. One such consequence is the creation of inflexible procedures for implementing parenting time abatements in support orders that often differ from the traditional procedures.

Michigan child support orders usually provide that the payer will receive a 50% support abatement when the child(ren) spends six or more consecutive overnights with the payer. Before MiCSES, courts implemented the provision in different ways. Some allowed a payer and payee to anticipate the abatement; the FOC would refund 50% of the current support as the parenting time was occurring. Others required the payer to submit a request and, after it was verified, 50% of future support payments were refunded to the payer until the abatement amount was satisfied. Still other courts created a credit and paid it after all other support was paid.

When MiCSES was implemented, the programmers reviewed Michigan statutes governing support abatements and determined that 1) the standard language made the abatement a credit, and 2) the overpayment-of-support provisions in MCL 552.605c(4)¹ required the system to

¹ "The subsection reads: (4) If the title IV-D agency receives a support payment that, at the time of its receipt, exceeds a payer's support amount payable plus an amount payable under an arrearage payment schedule, the title IV-D agency shall apply the excess against the payer's total arrearage accrued under all support orders under which the payer is obligated. If a balance remains after application against the total arrearage, the title IV-D agency shall do 1 of the following:
(a) If the payer designates the balance as additional support, immediately disburse that amount to the recipient of support.

retain the credit as long as the amount was less than a month's support. The amount would be paid to the payee at the end of the month if any current support was due; if none was due, the system continues to retain the money until current support is due or until the total exceeds one month's support, in which case the payer gets a refund.

The effect of implementing the statute is that abatements that used to be returned to a payer who was current in support are now held. FOCs may intervene to cause the abatement to be refunded to the payer. However, this process is time-consuming and labor-intensive.

Enhancing the system to include more abatement options has become a top priority. However, there is a limited amount of programming time and the abatement enhancements will not be completed for over a year.

While a systemic solution is pending, courts may find that the inability of the system to give the abatement immediately will create unjust or inappropriate results. If so, courts and FOCs may wish to avoid the abatement issue by entering orders that deviate from the child support formula by subtracting the anticipated abatement from the support amount and eliminating the abatement provision as a separate clause in the order.

If the court deviates by not including a separate abatement provision, the order must reflect this fact and must not contain the previously standard abatement language. The order also must state the amount of the deviation.

If the court enters an order deviating from the formula and the payee finds that the parenting time is not occurring as contemplated, the payee will have grounds to modify the order as to both support and parenting time. If the deviation amount is set forth in the court order, the court and the FOC will be able to expedite relief in these situations by referencing (from the order) the correct amount of support before the deviation.

If the payer has an arrearage, deviation may not be appropriate because any abatement can be used to pay down the arrearage more quickly.

SCAO has developed a calculator to help courts and FOCs determine child support amounts that factor the abatement into the monthly amount as a deviation. The calculator is available at <http://courts.michigan.gov/scao/services/focb/mcsf.htm#abate>.

Courts and friends of the court should direct questions concerning this policy to Steve Capps by phone (517)373-4835 or e-mail at cappss@courts.mi.gov.

(b) If, at the time the payment is received, the payer is obligated under a support order for a future support payment and the balance is less than or equal to the monthly support order amount, retain the balance and disburse it to the recipient of support immediately when the amount is payable as support.

(c) If, at the time the payment is received, the payer is not obligated for a future support payment, or the payer is obligated under a support order for a future support payment but the balance is greater than the monthly support order amount, return the balance to the payer.”